IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 65 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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IDEA CELLULAR LTD. THR' SR.MANAGER (LEGAL) - Petitioner(s)

Versus

UMRETH MUNICIPALITY & 1 - Respondent(s)

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Appearance :

MR JAL SOLI UNWALA for Petitioner(s) : 1,
MR DA BAMBHANIA for Respondent(s) : 1,2.

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 14/02/2006

ORAL JUDGMENT

1.Rule. Learned advocate Shri Bambhania waives service of notice of rule on behalf of the respondents. At the joint request of the learned advocates appearing for the parties, the petition is taken up for final

disposal today.

2. In the present petition, the issue arising is that of a BTS Tower constructed by the petitioner which is a cellular service provider. The stand of the respondents is that such Tower is without proper permissions and that the same should be removed. The petitioner has been agitating that no separate “BU Permission” is necessary for erection of the Tower and the Tower fulfills all legal requirements including that of structural stability on the building on which it is erected. In an earlier round of litigation, this Court had disposed of the petition filed by the present petitioner being Special Civil Application No.11780/2005 by an order dated 18-07-2005. The application of the petitioner dated 04-03-2005 which was pending with the authorities was directed to be disposed of expeditiously. This application came to be turned down by impugned communication dated 06-12-2005 which has prompted the petitioner to file the present fresh petition.

3. The main ground for rejection of the request of the petitioner was that a certified copy of order dated

24-10-2001, reliance on which was placed by the petitioner was not supplied and that revised plans were also not produced. The learned advocate Shri Unwala for the petitioner submitted that the plans were very much before the authorities and the same were also produced before this Court in the earlier petition and are also produced in the present petition.

3.1 He further submitted that if the authorities had any doubts about the judgement of this Court, reliance on which was placed by the petitioner, the respondents could have directed the petitioner to produce certified copy thereof. However, to ignore the order passed by this Court on the ground that same is not a certified copy was not proper.

4. I need not go into the reasons which prompted the authorities to reject the application of the petitioner since after some discussion at bar, a consensus has been arrived at to resolve the disputes.

5. The learned advocate Shri Bambhania for the respondents submitted that the building on which BTS Tower of the petitioner is erected itself is not according to the

plans passed by the authorities and the proceedings are initiated for demolition of the building or at-least part thereof. He therefore, submitted that on such a building which itself is not constructed legally, the petitioner cannot have permanent permission to erect the Tower. He further submitted that the prime concern of the authorities is the structural stability of the building and if the petitioner satisfies the authorities regarding the same, until such time the authorities decide finally the fate of the building itself, the petitioner may give ad hoc permission to continue the use of its Tower already erected.

6. The learned advocate Shri Unwala submitted that the petitioner is willing to approach the authorities and satisfy the respondents about the stability of the structure in question and that the BTS Tower does not in any manner breach any other by-law or requirement under the statute. He further agreed that in case the building itself is not cleared by the authorities and if the whole of the building or substantial portion thereof is to be demolished, the petitioner will remove its Tower and will not claim any equity under any permission that the respondents may give pursuant to

this order. In view of the above submissions, the petition is disposed of by giving following directions :

1) The petitioner shall apply to the respondents with proper plans and certificates of Structural Engineer. Such application shall be made within a period of one week from today. If received, the application shall be examined by the respondents to consider whether the petitioner can be granted some ad hoc permission to continue the use of BTS Tower already constructed. This will be subject to final decision that the authority may take in respect of the building on which Tower has been constructed.

2) In case ultimately either the whole building or substantial portion thereof is ordered to be demolished, the petitioner shall not claim any equity for having enjoyed the use of the Tower under this order and the petitioner shall remove the Tower within a reasonable time that may be permitted by the authorities to permit the authorities to carry out necessary demolition.

3) The authorities shall take a fresh decision unmindful of the earlier orders expeditiously and preferably within a period of three months from the date of receipt of a copy of this order. It will be open for the respondents to call for additional material to satisfy themselves about the strength of the building in question and the structural stability of the Tower which is the main anxiety and paramount consideration of this Court.

7. With these directions,the petition is disposed of. Rule is made absolute to the above limited extent with no order as to costs.

(Akil Kureshi,J.)

(raghu)